

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
AMARILLO DIVISION

ROBERT GENE OILER,

Petitioner,

v.

2:18-CV-123-D

LORIE DAVIS, Director,
Texas Department of Criminal Justice,
Correctional Institutions Division,

Respondent.

**FINDINGS, CONCLUSIONS AND RECOMMENDATION
TO DENY PETITION FOR A WRIT OF HABEAS CORPUS**

Petitioner has filed with this Court a Petition for a Writ of Habeas Corpus by a Person in State Custody challenging the results of three (3) prison disciplinary rulings. [ECF 3]. For the following reasons, petitioner's habeas application should be denied.

In order to challenge a prison disciplinary adjudication by way of a federal petition for a writ of habeas corpus, a petitioner MUST, at a minimum, be eligible for mandatory supervised release and have received a punishment sanction that included forfeiture of previously accrued good time credits. *See Malchi v. Thaler*, 211 F.3d 953, 958 (5th Cir. 2000). In his application, petitioner states he is presently serving a 99-year sentence for an April 30, 1999 conviction out of Jackson County, Texas. [ECF 3 at 2]. Although petitioner does not identify the crime of which he was convicted, review of the online Offender Information Detail maintained by the Texas Department of Criminal Justice confirms petitioner was convicted of the offense of assault on a public servant, said offense committed August 27, 1998. *See State v. Oiler*, No. 98-11-6085 (April 30, 1999). In response to Question 15 of his form habeas application, petitioner acknowledges that for his original conviction, there was a judicial finding that he used or exhibited a deadly weapon during the commission of his offense. [ECF

3 at 5]. The Texas mandatory supervision eligibility statute in effect when petitioner committed his assault on a public servant offense stated an inmate who “is serving a sentence for or has been previously convicted of . . . an offense for which the judgment contains an affirmative [deadly weapon] finding” may not be released to mandatory supervision. See Tex. Gov’t Code § 508.149(a)(1) (1999). In response to Question 16 of his form habeas application, petitioner acknowledges he is not eligible for release on mandatory supervision. [ECF 3 at 5]. As petitioner is not eligible for mandatory supervised release, he cannot challenge a prison disciplinary proceeding by way of a federal petition for a writ of habeas corpus. See *Malchi*, 211 F.3d at 958. Petitioner’s habeas application should be DENIED.

RECOMMENDATION

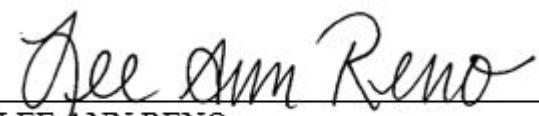
It is the RECOMMENDATION of the United States Magistrate Judge to the United States District Judge that the Petition for a Writ of Habeas Corpus by a Person in State Custody filed by petitioner ROBERT GENE OILER be DENIED.

INSTRUCTIONS FOR SERVICE

The United States District Clerk is directed to send a copy of these Findings, Conclusions and Recommendation to each party by the most efficient means available.

IT IS SO RECOMMENDED.

ENTERED September 18, 2018.



LEE ANN RENO
UNITED STATES MAGISTRATE JUDGE

*** NOTICE OF RIGHT TO OBJECT ***

Any party may object to these proposed findings, conclusions and recommendation. In the event parties wish to object, they are hereby NOTIFIED that the deadline for filing objections

is fourteen (14) days from the date of filing as indicated by the “entered” date directly above the signature line. Service is complete upon mailing, Fed. R. Civ. P. 5(b)(2)(C), or transmission by electronic means, Fed. R. Civ. P. 5(b)(2)(E). **Any objections must be filed on or before the fourteenth (14th) day after this recommendation is filed** as indicated by the “entered” date. *See* 28 U.S.C. § 636(b); Fed. R. Civ. P. 72(b)(2); *see also* Fed. R. Civ. P. 6(d).

Any such objections shall be made in a written pleading entitled “Objections to the Findings, Conclusions and Recommendation.” Objecting parties shall file the written objections with the United States District Clerk and serve a copy of such objections on all other parties. A party’s failure to timely file written objections shall bar an aggrieved party, except upon grounds of plain error, from attacking on appeal the unobjected-to proposed factual findings, legal conclusions, and recommendation set forth by the Magistrate Judge and accepted by the district court. *See Douglass v. United Services Auto. Ass’n*, 79 F.3d 1415, 1428-29 (5th Cir. 1996) (en banc), superseded by statute on other grounds, 28 U.S.C. § 636(b)(1), as recognized in *ACS Recovery Servs., Inc. v. Griffin*, 676 F.3d 512, 521 n.5 (5th Cir. 2012); *Rodriguez v. Bowen*, 857 F.2d 275, 276-77 (5th Cir. 1988).